IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 463 of 2006

Date of decision:- 29/06/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 29/6/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.463 of 2006

R.D. Sharma S/o Shri Nandram Sharma
R/o Divya Bihar Dada Dharampur
Dehradun
District Dehradun .....Applicant

Versus

1. State of Uttaranchal
2. District & Sessions Judge Haridwar
   District Haridwar
3. Judicial Magistrate, Haridwar
4. Harbhajan Singh S/o Shri Amarnath
   R/o F-80 Industrial Area Haridwar
   P.S. Kotwali Haridwar
   District Haridwar ...Respondents

Dated :- 29th June, 2006

Sri Manish Arora learned counsel for the applicant.
Sri Amit Bhatt and Sri G.S. Sandhu learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the judgment & order dated 21.03.2006 passed by the Sessions Judge, Haridwar in criminal revision No.112/2006 and summoning order dated 12.10.2004 passed by the Judicial Magistrate, Haridwar in complaint case No.1137/2004 Harbhajan Singh Vs. Shri Mukesh Narayan under sections 406, 420, 120-B IPC.

2. Brief facts of the case are that the respondent no.4 has filed a complaint against the applicant & two other persons under sections 406, 420, 120B IPC with the allegations that the accused persons had taken a loan of Rs.1,50,000/- from the complainant for the purpose of construction of the house. But, the accused persons did not re-pay the loan to the respondent no.4. Ultimately, the accused gave a cheque of Rs.65,000/- to the

respondent no.4. When the respondent no.4 submitted the said cheque in the bank, it was dishonoured by the bank due to insufficient fund in the account. Ultimately, on 12.09.2004 at about 7:30pm when the complainant was sitting in his house the accused persons entered into his house and hurled the abuses. The complainant asked them as to why they are hurling abuses. On this, the accused persons stated him that they are not going to return the money and if he would demand again they would kill him. On hearing the hue and cry, the witnesses reached at the spot. Thereafter, the accused persons fled away from the spot. The report to this effect was sent to the SSP, but the report could not be lodged. Thereafter, the respondent no.4 filed a complaint before the Magistrate. In support of his case, the respondent no.4 has examined himself under section 200 Cr.P.C. The respondent no.4 has also produced the evidence of M.S. Ashwal and Pankaj Nautiyal under section 202 Cr.P.C. Thereafter, the magistrate took the cognizance vide order dated 12.10.2004. Feeling aggrieved by the order of the Magistrate, the applicants have preferred a revision before the Sessions Judge and the same was dismissed on 12.06.2006. Feeling aggrieved by both the orders, the applicant has preferred this petition before this Court.

3. It was contended on behalf of the applicant that the theory advanced by the complainant is highly improbable and the evidence led by the complainant is not credible and cogent. As such, the cognizance order passed by the magistrate was illegal and improper and the same has been passed without applying judicial mind. Learned AGA refuted the contention. It is well settled position of law that the inherent powers for quashing the proceedings at the initial stage can be

exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Cr.P.C. or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge. **{See R.P. Kapur Vs. State of Punjab A.I.R. 1960 SC 866, M. Krishnan Vs. Vijay Singh & another 2001(8) SCC 645, State of Haryana Vs. Bhajan Lal AIR 1992 SC 604, 1992 SCC(Cri) 426 and Union of India Vs. Prakash P. Hinduja 2003 SCC (Cri) p/1314}.**

4. Perusal of the present complaint itself reveals that the prima facie case is made out against the applicant. The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its

whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs.Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

5. Perusal of the complaint itself reveals that the prima facie case is made out against the accused persons.

6. It was contended that the Sessions Judge held that if the applicant files an application under section 204 Cr.P.C. to quash the cognizance order the Magistrate would consider the said application. It is pertinent to mention here that the Magistrate has no power to recall its earlier order. In view of the decisions of the Hon'ble Supreme Court in **Adalat Prasad Vs. Roop Lal Jindal Air SC(W) p/5174 and Subramanium Sethuraman Vs. State of Maharashtra 2005 SCC(Cri) p/242,** the cognizance order cannot be challenged before the trial court and trial court has got no jurisdiction to recall its earlier order, which was already passed by him. In the aforesaid decisions, it has been held that the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under section 482 Cr.P.C. The only remedy for the applicant is to challenge the cognizance order under

section 482 Cr.P.C. Therefore, the revision was not maintainable and no such direction can be issued by the Sessions Judge.

7. In view of above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 29.06.2006

LSR